

CHILD CUSTODY/VISITATION

Factors

Initial Custody awards are generally made on a case by case basis of the best interests of the child. *Montgomery County v. Sanders*, 38 Md.App. 406 (1978)

Factors the court has included in making decision...

Religion	<i>Bienenfeld v. White</i> , 91 Md.App. 488 (1992)
Adultery	<i>Davis v. Davis</i> 1977, 280 Md. 119 (1977) <i>Swain v Swain</i> , 43 Md.App. 622 (1979)
Gender	<i>Giffin v. Crane</i> , 351 Md. 133 (1998)
Abuse	<i>In re Adoption No. 12612</i> , 353 Md. 209 (1999) FL§9-101
Child's desires	<i>John O. v. Jane O.</i> 90 Md. App. 406 (1992)
Material advantages	<i>McCann v McCann</i> 167 Md. 167 (1934)
Fitness of the parents	<i>Barton v. Hirshberg</i> , 137 Md. App. 1 (2001)
Character and reputation	<i>Best v. Best</i> , 93 Md. App. 644 (1992)
Desire of natural parents	<i>Best v. Best</i> , 93 Md. App. 644 (1992)
Agreements between the parties	<i>Best v. Best</i> , 93 Md. App. 644 (1992)
Potential of maintaining natural family	<i>Best v. Best</i> , 93 Md. App. 644 (1992)
Preference of child	<i>Barton v. Hirshberg</i> , 137 Md. App. 1, (2001)
Material opportunities	<i>Pastore v. Sharp</i> , 81 Md. App. 314 (1989)
Age, health, and sex of the child	<i>Best v. Best</i> , 93 Md. App. 644 (1992)
Residences of parents and visitation	
Length of separation from natural parents	
Prior voluntary abandonment or surrender	

Joint Custody

Joint custody is permitted in Maryland. The best interest of the child standard remains determinative, as do the relevant factors. Joint Custody is only a viable option if parents are willing to cooperate with one another in making decisions for the child. The enumerated factors, with the first given the most weight, are: *Taylor v. Taylor*, 306 Md. 290 (1986)

- (1) Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare.
- (2) Willingness of Parents to Share Custody
- (3) Fitness of Parents
- (4) Relationship Established Between the Child and Each Parent
- (5) Preference of the Child
- (6) Potential Disruption of Child's Social and School Life
- (7) Geographic Proximity of Parental Homes
- (8) Demands of Parental Employment
- (9) Age and Number of Children
- (10) Sincerity of Parents' Request
- (11) Financial Status of the Parents
- (12) Impact on State or Federal Assistance

Joint Custody awarded with one spouse given tie breaker power.
Shenk v. Shenk, 159 Md. App. 548 (2004)

Grandparent visitation

§9-102, is not unconstitutional on face, but can be applied unconstitutionally Koshko v. Haining
398 Md. 404, (2007)

Grandparent visitation statutes are no per se unconstitutional, but require presumption that fit parents act in the best interests of their children. Grandparents must show prima facie evidence of parental unfitness or exceptional circumstances

Koshko v. Haining 398 Md. 404, (2007)

De Facto Parents

De facto parents are not recognized in Maryland

Janice M. v. Margaret K. 404 Md. 661 (2008)

Third Party Visitation

Third Parties are held to the grandparent visitation standard, they must prove that parent was unfit or that there was exceptional circumstances to overcome mother's due process liberty interest in care, custody, and control of her child. Janice M. v. Margaret K. 404 Md. 661 (2008)

Child Counsel

9-205.2

Fees

Meyr v Meyr (2010)

VanShaik v Vanshaik (2011)

Powers of Masters

The trial court is required to address, with specificity and on the record, the exceptions raised to a Master's findings.

Lemley v Lemley, 102 Md.App. 266 (1994)

The trial court may an immediate pendete lite order based only on Master's findings if the Master finds "extraordinary circumstances" and recommends immediate disposition.

Miller v Bosley, 113 Md. App. 381, (1997)

The court may not change custody award based only on master's report without an independent review of facts.

Wise-Jones v Jones, 117 Md.App. 489 (1997)

Conditional awards of Custody

Cohen v. Cohen, 162 Md. App. 599 (2005)

The court may make custody conditional on abstention from a vice without request from the other party.

Frase v Barnhardt 379 Md. 100 (2003)

The court may not make conditional custody award to fit parent.

Schaefer v Cusack (1998)

In futuro custody awards are improper.

Relocation of Child

Braun v Headley (2000)

Constitutional right to travel permits parent to move with notification

Domingues v. Johnson (1991)

Relocation can be a change in circumstances warranting change in custody.

Goldmeier v. Lepselter, 89 Md.App. 301 (1991).

The relocation of a child requires reevaluation of best interest, neither party has burden to prove.

Skunk v. Walker 87 Md.App. 389 (1991)

Relocating a child without notification to the other party may be a change in circumstances)